

# EXHIBIT 3

1 Laymon who represents Theron Davis who will be next  
2 called as a witness and who we intend to voir dire.  
3 It's my understanding from just listening to counsel  
4 talking that he's going to take the Fifth.

5 MR. LAYMON: That's correct, Your Honor.

6 THE COURT: All right. So I guess the answer  
7 is we swear him in and he tells us what he's going to  
8 tell us and then you make your pitch. Okay? That's  
9 the ground rules. I have a motion to quash the subpoena.  
10 When he's ready, bring in Mr. Davis.

11  
12 THERON DAVIS, a witness for the defense,  
13 was sworn and testified as follows, outside the  
14 presence of the jury:

15  
16 VOIR DIRE EXAMINATION

17 By Mr. Rappaport:

18 Q Sir, would you state your name for the record, please?

19 A Theron Davis.

20 THE COURT: Is that T-h-e-r-o-n?

21 THE WITNESS: Yes.

22 THE COURT: Okay.

23 BY MR. RAPPAPORT:

24 Q Mr. Davis, do you have a nickname?

25 A I would like to invoke my Fifth Amendment right under

1 the Constitution of the United States.

2 Q Mr. Davis, do you know a Romero Holliday?

3 A I invoke my Fifth Amendment under the Constitution of  
4 the United States.

5 Q Mr. Davis, do you know a Chris Cousins?

6 A I revoke my Fifth Amendment under the United States --  
7 under the Constitution of the United States.

8 THE COURT: I think he meant to say, invoke.  
9 Did you not?

10 THE WITNESS: Yes.

11 BY MR. RAPPAPORT:

12 Q Sir, do you know Shawn Drumgold?

13 A I invoke my Fifth Amendment right under the Constitution  
14 of the United States.

15 Q Sir, do you know a London Williams?

16 A I invoke my Fifth Amendment under -- I invoke my Fifth  
17 Amendment right under the Constitution of the United  
18 States.

19 Q Sir, directing your attention to the night of August 19,  
20 1988, were you ever on Humboldt Ave. in the vicinity of  
21 Homestead Street that night?

22 A I invoke my Fifth Amendment right under the Constitution  
23 of the United States.

24 Q Sir, directing your attention to August 19, 1988,  
25 were you in a white jeep or white Suzuki Samurai that

1 night?

2 A I invoke my Fifth Amendment right under the Constitution  
3 of the United States.

4 MR. RAPPAPORT: I have no further questions.

5 THE COURT: Mr. Laymon, perhaps you could  
6 clear the air for me as to why your client is invoking  
7 his Fifth Amendment right? For the record, this is  
8 Mr. John Laymon who is counsel for Mr. Theron Davis.

9 MR. LAYMON: Your Honor, Mr. Davis is  
10 presently indicted here in Suffolk County on several  
11 charges, those charges being unlawfully carrying a  
12 firearm on his person, second and subsequent offense,  
13 unlawful possession of ammunition, receiving stolen  
14 goods, and an assault and battery on a police officer.  
15 That case may be going to trial within the next week  
16 or two. It is the belief of myself and my client that  
17 he is being prejudiced by his name being brought up in  
18 this action. He has no information of any value  
19 to give to either the Commonwealth in this case or the  
20 defense. It is our belief that anything he may say  
21 may tend to incriminate him.

22 So, for all of those reasons, Your Honor, he  
23 is invoking his Fifth Amendment rights.

24 THE COURT: Incriminate him as to what, sir?  
25 As to the other offenses or as to this offense?

1 MR. LAYMON: It may incriminate him as to  
2 this offense, it may have something to do with his  
3 present offenses. So for all of those reasons, he is  
4 invoking his Fifth Amendment right.

5 MR. RAPPAPORT: If I may, Your Honor, certain  
6 questions that I've asked him, question number one,  
7 were you ever in a white jeep Suzuki Samurai on the  
8 night of August 19, 1988, although Mr. DeLuca who was  
9 just in the courtroom couldn't himself remember the  
10 identity of certain individuals that he stopped in that  
11 vehicle, I do have in my possession an incident report  
12 prepared by his partner, and his partner, in fact,  
13 did discover the identity of the passenger in that  
14 particular vehicle, and in Mr. Smith's report, Officer  
15 Smith's report on that night, he states that Officers  
16 investigated both black males in the Samurai, able to  
17 identify one Theron "Apple" Davis as the passenger  
18 of the motor vehicle.

19 Judge, I can see no way in which his answer  
20 to that question could possibly incriminate him any  
21 further than he would already be incriminated simply  
22 by the police officers who stopped the vehicle and  
23 identified that person in the vehicle.

24 Number two, with regard to the question,  
25 were you ever on Humboldt Ave. in the vicinity of

1 Homestead Street on the night of August 19, 1988, I  
2 have had supplied to me by my brother Beauchesne, a  
3 Boston Police incident report from the homicide unit  
4 prepared by Detective William Fogarty, who spoke to  
5 Mr. Davis on a prior occasion along with Detective  
6 Walsh. They spoke to Mr. Davis on Saturday, August 20,  
7 and they state in their report, Davis was asked if  
8 he was on Humboldt or Homestead or Sonoma Streets Friday  
9 night, this being Saturday when the report was written,  
10 and Davis stated "no." If I may show the Court both  
11 documents --

12 I state to the Court as follows: When asked  
13 previously by police officers whether or not he was  
14 ever on Homestead or Humboldt or Sonoma on the night  
15 of August 19, he already has responded to the police  
16 officers that, in fact, he was not there. If he said  
17 he was there, I could understand how that might tend  
18 in some way - I can't even understand how that would  
19 tend to incriminate him - but he's already been asked  
20 the question by the police and he's already responded  
21 to that question in the negative.

22 As far as whether or not he was in a particular  
23 vehicle that night, Your Honor, I submit that that can  
24 be shown by an independent source and I don't see where :  
25 that answer would tend to incriminate him.

1 THE COURT: I have to deal with the evidence  
2 before me now, and on the state of the evidence at  
3 this point, I do not have any of that information that  
4 you suggest is operative, so that all I have is the  
5 representations by you and the copies of the police  
6 reports.

7 MR. RAPPAPORT: Well, at this juncture, Your  
8 Honor, I can only make my representations based upon  
9 the information that's been supplied to me by the  
10 government. I have a good faith reason for asking the  
11 two specific questions that we just discussed, and  
12 quite frankly, Judge, I do not see how, assuming that  
13 the officer's reports are accurate and I submit to  
14 the Court that's a fair assumption at this point --

15 THE COURT: Were the officer's reports  
16 statements by this witness under oath?

17 MR. RAPPAPORT: One report is an observation  
18 by an officer. Another report, I don't believe the  
19 witness was under oath.

20 THE COURT: That puts it, I think, in a new  
21 light because the witness is now under oath and believes  
22 that and has represented through counsel, that the  
23 information would tend to incriminate him and I have  
24 heard a bit about a white Suzuki in the testimony in  
25 this case in chief.

1 MR. RAPPAPORT: I understand that, Your  
2 Honor. However, I state to the Court that it's one  
3 thing for the witness and for his counsel to try to  
4 imagine that this could incriminate him. I submit,  
5 Your Honor, that he's already made the statement that  
6 he's made, he's already been observed where the report  
7 indicates he was observed, and I don't see where his  
8 statement would incriminate him.

9 THE COURT: I have your point. Mr. Beauchesne,  
10 anything you would care to say?

11 MR. BEAUCHESNE: I think I should, in all  
12 fairness, I should add that it is the theory of the  
13 Commonwealth the white Suzuki was involved in this  
14 case and that London Williams was the driver, that  
15 my best information is that there were three shooters  
16 and I believe one of them is sitting right next to  
17 you.

18 THE COURT: I think then on this theory,  
19 your argument I understand, but in light of that --

20 MR. LAYMON: Your Honor --

21 THE COURT: Mr. Laymon, I'm not disagreeing  
22 with a thing you've said. I would think at least as  
23 to that question and anything that relates to that,  
24 with those events that surrounded the intersection of  
25 those two streets on that night, particularly in the



1 light of the white Suzuki, that it might very well tend  
2 to incriminate him.

3 MR. RAPPAPORT: Your Honor --

4 THE COURT: Sure.

5 MR. RAPPAPORT: With respect to the questions  
6 regarding, does Mr. Davis know Shawn Drumgold, question,  
7 does he know Chris Cousins, does he know Romero Holliday,  
8 and did he ever visit -- well, I didn't ask the question  
9 but I know that I would ask, did he ever visit Romero  
10 Holliday in the hospital, and if the answer to that  
11 question was yes, was Mr. Drumgold present and was  
12 Mr. Cousins present, those would be further questions  
13 that I would ask him, once again, his knowledge of  
14 Romero Holliday, his knowledge of Chris Cousins, his  
15 knowledge of Mr. Drumgold, would not tend to incriminate  
16 him in any way, manner, shape or form. Whether or not he  
17 visited Mr. Holliday, again, I don't see where that  
18 would tend to incriminate him.

19 THE COURT: Were it not for the evidence in  
20 this case that came in the case in chief, I might  
21 agree with you that this is a matter of benign interest  
22 to the Court, but if because of some import relating  
23 to the defendant Taylor and Drumgold as to a particular  
24 visit and I would suggest that probably the next  
25 question, in addition to going to the hospital, would

1 be the particular visit, was whether the defendant  
2 and former defendant, Drumgold and Taylor respectively,  
3 were present.

4 So far, I will consider it on a question by  
5 question basis, but I think it clearly could tend to  
6 incriminate, particularly on the representation of this  
7 Assistant District Attorney who is in charge of the  
8 case.

9 MR. RAPPAPORT: Judge, with all due respect  
10 to my brother, Mr. Beauchesne, that technically could  
11 be a response by Mr. Beauchesne to almost any person  
12 that was brought into the Court.

13 THE COURT: Not from Mr. Beauchesne.

14 MR. BEAUCHESNE: I would object to that.

15 MR. RAPPAPORT: When I say that, I don't mean --  
16 I would like to correct that statement.

17 THE COURT: Sure.

18 MR. RAPPAPORT: And I withdraw any intimation  
19 that Mr. Beauchesne has any nefarious or malevolent  
20 motives in this. So that the record be clear, what I'm  
21 saying now, Your Honor, is that there are many witnesses  
22 who could be called in this case who could be  
23 tangentially involved in one way or another, certainly.  
24 The Commonwealth could indicate in one way or another  
25 that perhaps, perhaps people were involved. If I were

1 to call an individual by the name of Paris Phillips,  
2 if I were to call a person by the name of London  
3 Williams, these are persons, that through testimony to  
4 date, have been identified as associates of this  
5 individual. The Commonwealth could make the same  
6 argument, yet they might have exculpatory information  
7 to offer.

8 I do believe, Judge, if I were to ask this  
9 individual the question, did you ever visit Romero  
10 Holliday in the hospital, and he were to say, yes,  
11 and I were to ask him, was Mr. Cousins present, I believe  
12 that his answer would be no. I believe that, based  
13 upon what Mr. Cousins said yesterday, Mr. Cousins came  
14 in here and said that he had heard some talk about  
15 some retaliation, however he says, before that talk  
16 came down, Theron David had left the room. He was  
17 going out as Mr. Cousins came in, so the mere fact of  
18 whether or not he had seen Christopher Cousins at  
19 that room would not tend to incriminate him because,  
20 even in the light most favorable to the Commonwealth,  
21 or for the evidence in the light most favorable to the  
22 Commonwealth as it's come in to date, Mr. Davis was  
23 out of the room by the time the conversation took  
24 place.

25 So I submit to the Court that by asking him

1 the question as to whether or not he had ever seen  
2 Christopher Cousins present when visiting Romero  
3 Holliday, based upon what the Commonwealth has elicited  
4 from Mr. Cousins, it wouldn't be incriminating, because  
5 according to Mr. Cousins, Mr. Davis left prior to any  
6 of the discussions that Mr. Cousins described, and I do  
7 not see where that's incriminating.

8 If, if I were to ask this individual, did  
9 you ever visit Romero Holliday while he was in the  
10 hospital and he said yes, that in and of itself, would  
11 not be incriminating. If I said to him, was Mr. Drumgold  
12 present when you visited Romero Holliday, and he answered,  
13 no, which I believe would be his answer, then again it  
14 would not incriminate him in any way. What it would  
15 do, Judge, what it would do, it would contradict and  
16 impeach the credibility of what is a very key  
17 Commonwealth witness right now, Mr. Cousins, and on  
18 that basis I don't see where Mr. Davis would be  
19 incriminating himself.

20 MR. BEAUCHESNE: If I might, Your Honor.  
21 There has been testimony, I believe, in the trial that  
22 at least one of the shooters was dressed in white.  
23 If that didn't come out in the trial, I know I have  
24 it in my file that one of the shooters was dressed in  
25 white. This gentleman was seen in the car. His

1 trademark is white, white Adidas. He was seen in the  
2 white Suzuki dressed in white. He was stopped ten  
3 minutes and forty seconds later in the white Suzuki  
4 dressed in white.

5 There were three shooters, most of the  
6 witnesses focused on the first two, the ones that were  
7 up front. There was one back, off to one side and I  
8 believe he was dressed in white. I think it's this  
9 man here. If I had a case to present to the grand  
10 jury I would do it, and the test, of course, is  
11 whether or not anything he says might lead to or tend  
12 to incriminate him. What I would object to doing is  
13 bringing him in, putting him on in one very small area,  
14 and then having him take the Fifth when I try to  
15 cross examine him.

16 I have to say, in my opinion, that it would  
17 be well in his behalf that he take the Fifth.

18 THE COURT: I understand. I am a believer in  
19 the metaphor of Pandora's box. I think that that  
20 metaphor applies in this particular case, and I would  
21 think that opening the door on a small series of  
22 questions is, at some point, going to open that box  
23 and the aducee will come out.

24 So I am going to allow the Fifth to be invoked  
25 in this particular case, particularly on the

1 representation that in the judgment of the Assistant  
2 District Attorney this person is a target of their  
3 investigation as to this crime.

4 MR. RAPPAPORT: With all due respect, Your  
5 Honor, if I were to limit the questions to not the  
6 evening that Tiffany Moore was killed, but if I were  
7 to limit the questions to whether or not he had ever  
8 seen Christopher Cousins at Romero Holliday's hospital  
9 room and whether or not he had ever seen Shawn Drumgold  
10 at Romero Holliday's hospital room, would that not --  
11 and I say this, if I just ask him the questions with  
12 regard to impeachment of Christopher Cousins, as opposed  
13 to anything dealing with specific events of August 19,  
14 I'd stay away from August 19, but as Mr. Cousins has  
15 said he saw a certain person leaving that hospital  
16 room when he went in, and that Mr. Drumgold was present  
17 when he went into that room, if this witness were  
18 allowed to answer and answer truthfully, I believe  
19 he would say that, number one, he never saw Christopher  
20 Cousins when he went to visit Romero Holliday -- I could  
21 leave it at that, quite frankly.

22 MR. BEAUCHESNE: But I have a right to cross  
23 examine and I am not, most respectfully, bound by his  
24 ideas of the limitations of the case and, for him, and  
25 every party in a criminal case has a right to adequately

1 confront the witnesses. For him to call the witness  
2 and say, I'm just going to put on this small,  
3 microscopic section of what I'd like you to testify  
4 to but you, Mr. Beauchesne, representing the  
5 Commonwealth will not be allowed to go into other  
6 areas which I might deem to be relevant and proper  
7 because he would take his Fifth Amendment, I suggest  
8 would give a totally distorted picture to the jury.

9 THE COURT: I agree. Your objection is noted,  
10 Mr. Rappaport. The witness may be excused. The  
11 witness is excused.

12 What's next? Mr. Rappaport, do you have  
13 another witness?

14 MR. RAPPAPORT: Your Honor, if Mr. Smith is  
15 here, I'd like to call him first. Otherwise, I can  
16 call Detective Walsh.

17 THE COURT: I'm anxious to move along. I'm  
18 going to go off the bench for just a minute but don't  
19 anybody go away.

20 MR. BEAUCHESNE: Could I be heard? After you  
21 come back could I be heard on the issue of Officer  
22 Smith at side bar?

23 THE COURT: Should we go to side bar first?

24 BENCH CONFERENCE

25 THE COURT: Do you have somebody here? Can